

RID (Rule Interpretation Decision)

(Use additional sheets as necessary)

Type of RID	Requested Response Time	DSD Assigned RID # 104
Customer RID <input type="checkbox"/>	24 hours <input type="checkbox"/>	
Internal Staff RID <input type="checkbox"/>	10 working days <input type="checkbox"/>	
	As time available <input type="checkbox"/>	

1. Project Name: World Finance

2. Project Number: AP # 1764535, 1764545

(Plat #, Zoning Case #, etc.)

3. Project Street Address: 4879 W. Commerce Street

(If not available nearest intersection of two public streets)

4. Applicant Name: Kaufman & Killen, Inc.

5. Applicant Address: 100 West Houston Street, Suite 1250, San Antonio, Texas
78229

6. Applicant Telephone #: (210) 227-2000

7. Applicant e-mail Address: ashley@kk-lawfirm.com

8. Rule in Question:

(Section and/or policy of UDC, Sign Code, etc)

The City of San Antonio Unified Development Code definition of "Specified Financial Institution" and "Loan Office."

9. Applicant's Position:

(Including date position presented and name of city staff point of contact)

Date: February 24, 2012 **Contact:** Ashley Farrimond **Contact Telephone #:** (210) 227-2000 ext. 18

In 2010 the City of San Antonio ("City") through Ordinance Number 2010-11-18-0985 amended its Unified Development Code ("UDC") to include "Loan Office" and "Specified Financial Institution" as defined land uses. The UDC defines a "Loan Office" as:

An office that provides installment loans, originated and serviced locally, with repayment terms over a fixed period of time with a set number of scheduled payments of principal and interest. A loan office provides services to clients by appointment only or via internet or telephone. Examples include mortgage lenders, signature loans and student loan companies. A loan office shall not include any use that meets the criteria of a specified financial institution, as defined.

A "Specified Financial Institution" is defined as:

Any business whose primary function is to lend money on a temporary basis, wherein such loans are secured by a post-dated check, paycheck, anticipated tax refund, vehicle title or tax-liened property; or to cash checks or other negotiable instruments for a fee, service charge or other consideration; or to provide funds on a deferred-deposit basis. A specified financial institution may offer walk-in service or may serve clients via internet or telephone. The term "specified financial institution" includes without limitation the following uses: check cashing facilities as well as agencies that provide pay-day loans, vehicle title loans, refund anticipation loans or tax-lien loans. This term shall not include financial institutions regulated by the Texas Department of Banking, the Texas Credit Union Department or National Credit Union Association. Further this term shall not include either:

- 1) A retail establishment engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cash checks, issue money orders or money transfers for a minimal flat fee as a service that is incidental to its main purpose as a retail business, or*
- 2) A professional office primarily engaged in tax preparation services that provides refund anticipation checks for a minimal flat fee incidental to its main purpose as a tax preparer.*

See also City Code chapter 16, article XVII related to refund anticipation loans.

The UDC regulates "Loan Offices" and "Specified Financial Institutions" differently, but the distinction between the two use classifications is sometimes unclear. Installment or signature lenders that require repayment through scheduled payments over a fixed period of time are classified as "Loan Offices" under the UDC. However, these same lenders may take a security interest in tangible personal property for collateral, including title to a motor vehicle, and could also be classified by the City as a "Specified Financial Institution." This RID is requested to clarify that installment and signature lenders are "Loan Offices" under the UDC and that they should not be classified with payday and title loan businesses as "Specified Financial Institutions."

Signature and installment lenders are regulated differently under Texas law. Recently adopted changes to Texas law provide an even clearer distinction between installment/signature lenders and payday and title loan businesses.

Under Texas law both "Loan Offices" and "Specified Financial Institutions" are governed by the Texas Finance Code ("TFC") and regulated by the Texas Office of Consumer Credit Commissioner ("OCCC"). The OCCC was created in 1991 to regulate the consumer credit industry through the enforcement of Texas credit laws and the licensing of qualified lenders.¹ The OCCC regulates home equity loans, secondary mortgages, home improvement loans, motor vehicle sales financing, pawnshop transactions, signature loans, payday loans, consumer installment loans, and retail credit

¹ <http://www.occc.state.tx.us/pages/agency/Index1.html>

accounts.² Until recently some Credit Service Organizations in Texas were able to make payday or car title loans outside the regulatory authority of the OCCC.³

Chapter 393 of the TFC governs Credit Service Organizations, which are defined as any person who provides, or represents that they can provide or assist with providing, payment of consideration for services that improve credit history or rating or for obtaining an extension of credit.⁴ TFC Section 393.002 specifically excludes the following businesses and persons from its application:

- 1) *a person:*
 - a) *authorized to make a loan or grant an extension of consumer credit under the laws of this state or the United States; and*
 - b) *subject to regulation and supervision by this state or the United States;*
- 2) *a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.);*
- 3) *a bank or savings association the deposits or accounts of which are eligible to be insured by the Federal Deposit Insurance Corporation or a subsidiary of the bank or association;*
- 4) *a credit union doing business in this state;*
- 5) *a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));*
- 6) *a real estate broker or salesperson licensed under Chapter 1101, Occupations Code, who is acting within the course and scope of that license;*
- 7) *an individual licensed to practice law in this state who is acting within the course and scope of the individual's practice as an attorney;*
- 8) *a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;*
- 9) *a consumer reporting agency;*
- 10) *a person whose primary business is making loans secured by liens on real property;*
- 11) *a mortgage broker or loan officer licensed under Chapter 156, Finance Code, who is acting within the course and scope of that license; or*
- 12) *an electronic return originator who:*
 - a) *is an authorized Internal Revenue Service e-file provider; and*

² <http://www.occc.state.tx.us/pages/agency/Index1.html>

³ HOUSE COMMITTEE ON PENSIONS, INVESTMENTS & FINANCIAL SERVICES, BILL ANALYSIS, Tex. H.B. 2594, 82nd Leg., R.S. (2011).

⁴ TEX. FIN. CODE Ch. 393 (2011).

- b) *makes, negotiates, arranges for, or transacts a loan that is based on a person's federal income tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.*⁵

In its 82nd Session, the Texas Legislature approved House Bill 2592 and House Bill 2594, both of which amended TFC Chapter 393.⁶ Effective January 1, 2012, H.B. 2592 and H.B. 2594 made significant changes to the licensing and regulation of Credit Service Organizations that provide extensions of consumer credit in the form of deferred presentment transactions or car title loans.⁷ With these legislative changes, “payday” and “title loan” businesses are more readily identified. This identification results in a greater distinction and clarity between “Loan Office” and “Specified Financial Institution”, as defined by the UDC.

H.B. 2594 clarifies that TFC Chapter 393 applies to Credit Access Businesses, which are defined as Credit Service Organizations that obtain for a consumer, or assist a consumer in obtaining, an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan. A “deferred presentment transaction” is defined as:

*A transaction in which: (a) a cash advance in whole or in part is made in exchange for a personal check or authorization to debit a deposit account; (b) the amount of the check or authorized debit equals the amount of the advance plus a fee; and (c) the person making the advance agrees that the check will not be cashed or deposited or the authorized debt will not be made until a designated future date.*⁸

A “Motor Vehicle Title Loan” is defined as:

*A loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 of another loan made to finance the purchase of a motor vehicle.*⁹

Prior to the adoption of H.B. 2594, Credit Service Organizations were only required to register with the Texas Secretary of State.¹⁰ Effective January 1, 2012, Credit Access Businesses are now required to obtain a license from the OCCC in addition to registering with the Secretary of State.¹¹ Both the Secretary of State registration and the OCCC licenses are accessible to the public on each entities respective website. H.B. 2592 further amended TFC Chapter 393 to require Credit Access Businesses to provide its customers with a disclosure statement describing interest, fees, refinancing, and interest rates on other alternative forms of consumer debt, including signature loans, prior to initiating

⁵ TEX. FIN. CODE §393.002 (2011).

⁶ See Tex. H.B. 2592 & 2594, 82nd Leg., R.S. (2011)

⁷ *Id.*

⁸ Tex. H.B. 2594, 82nd Leg., R.S. (2011); TEX. FIN. CODE §393.601(3) (2011); See also TEX. FIN. CODE 341.001(6) (2011).

⁹ Tex. H.B. 2594, 82nd Leg., R.S. (2011); TEX. FIN. CODE §393.601(5) (2011).

¹⁰ TEX. FIN. CODE §393.101; See also <http://www.sos.state.tx.us/statdoc/cso.shtml>

¹¹ Tex. H.B. 2594, 82nd Leg., R.S. (2011); TEX. FIN. CODE §393.603(2011).

lending activity.¹² This form is included within the Texas Administrative Code and is attached to this RID request for reference.¹³

Installment and signature lenders are licensed by the OCCC pursuant to TFC Chapter 342. Similar to Credit Access Businesses, installment and signature lenders are regulated by the OCCC, however they are not classified as Credit Access Businesses under TFC Chapter 393. Installment and signature lenders are not required to register with the Texas Secretary of State and are licensed by the OCCC as regulated lenders. As of January 1, 2012, payday and car title lenders are licensed with the OCCC as Credit Access Businesses.

TFC Chapter 393 specifically excludes a person authorized to make a loan or grant an extension of consumer credit under the laws of the State of Texas or the United States and that are subject to regulation and supervision by the State of Texas or the United States.¹⁴ Installment and signature lenders that are regulated under TFC Chapter 342 are excluded from the application of TFC Chapter 393.

In recognition of the recent changes in state law, we respectfully request that the City clarify that installment and signature lenders who are regulated by the OCCC and TFC Chapter 342 are not "Specified Financial Institutions", but are instead "Loan Offices." The Texas Legislature has imposed additional regulations and notice requirements on payday and car title lenders. The classification of payday and car title lenders as Credit Access Businesses allows the City to classify them as "Specified Financial Institutions." Other types of lenders, such as installment and signature lenders, are easily distinguished from such Credit Access Businesses, and should be classified as "Loan Offices." This application of definitions under the Unified Development Code is consistent with the intent of the adoption of such lending institution provisions, and would not require any revisions to the UDC.

10. Staff Finding:

(Including date of finding and name of city staff person formulating finding)

Date: 2/28/12 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

State law changed on January 1, 2012 pursuant to House Bills 2592 and 2594 amending Chapter 393 of the Texas Finance Code (TFC). These changes specifically enumerate a class of operations known as Credit Access Businesses that are now required to obtain a license from the Texas Office of Consumer Credit Commissioner (OCCC) and that must register with the Texas Secretary of State. Installment and signature lenders are regulated by the OCCC however they are not classified as Credit Access Businesses under the revised TFC and are not required to register with the Secretary of State and are licensed by the OCCC as regulated lenders pursuant to Chapter 342 TFC. With the

¹² Tex. H.B. 2592, 82nd Leg., R.S. (2011); TEX. FIN. CODE §393.223; *See also* 7 Tex. Admin. Code §83.6007 (2012) for Consumer Disclosures

¹³ 7 Tex. Admin. Code §83.6007 (2012).

¹⁴ TEX. FIN. CODE §393.002(a)(1)

change in state law, as of January 1, payday and car title lenders are licensed with the OCCC as credit access businesses.

11. Staff Position:

(Including date position presented internally and name of city staff person formulating position)

Date: 2/28/12 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

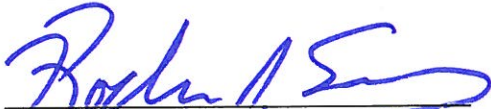
The specified financial institution use regulated by the Unified Development Code Section 35-394 is intended for the types of operations classified as Credit Access Businesses under TFC Chapter 393 such as payday lenders and vehicle title loans. Installment and signature lenders that are regulated by the OCCC and TFC Chapter 342 should fall under the UDC definition for a "loan office" rather than specified financial institution.

12. Departmental Policy or Action:

(Including date of presentation of policy or action to the applicant, the effective date of the policy or action, schedule for pursuing an amendment to the code if required and signature of the Director)

Date of policy/action: 2/28/12 **Effective Date of policy/action:** Immediate

Support staff and applicant position due to changes in state law that have occurred since adoption of the current UDC provisions.



Roderick Sanchez, AICP, C.B.O
Director



Date